

Application # - 10/801,520 Examiner Flood, Art Unit 1655
Reply to Office Communications dated 11/29/2006

Remarks/ Amendments to Comply

1. Objections: 35 USC 112 (indefinite claim language)

In the last office action, the examiner properly held the claims indefinite due to the term % weight, which lacked specificity. All composition claims specifying % weight have been changed and now read "% wt of the total composition". Also, broad range and limited ranges within each claim were held indefinite, all of which have been rectified in the new set of claims (33-60).

2. Rejections: Prior Art 35 USC 103(a)/ 102(b)

In the last office action, the examiner properly rejected the base independent claim, and subsequent dependent claims, based on prior art 103(a) / 102 (b). For this reason, we have narrowed the scope of the independent claim (New Claim 33). Claim 33 has been narrowed in scope enough to overcome all of the previously stated 102 (b) rejections, and hopefully any future rejections. Claim 33 (new) specifies a base composition comprised of turmeric, blackwalnut ± wormwood, garlic (\pm propolis), at least two from the Markush group of herbal antibacterial agents [indentation d], and a carrier of aloe or an acceptable carrier where a) b) c) and d) can include optional provision for niacin.

The only listed prior art rejection 102(b) that could stand against claim 33, is that which is described by Kimura [JP356071022A]. Kimura demonstrates a poultice drug to be applied for pain and rheumatism, by kneading and compounding garlic, wormwood, moxa (which is further defined as small combustible masses used to produce an eschar by being burned in contact with the skin termed "moxibustion") and are made up of wormwood further classified under various forms of artemisia such as A. moxa, A. Chinensis), egg white and flour. The invention described by Kimura appears to be a specific closed-end combination of these ingredients. Similarly, Kimura does not specifically demonstrate a composition as in the newly amended claims: which describes the required components of 1) wormwood ± black walnut 2) garlic 3) turmeric 4) aloe and 5) at lease two of the select herbal antibacterial/ anti-inflammatory agents and optionally niacin. Further, Kimuras invention teaches a composition for the purpose to treat muscle/bone pain and injury as opposed to a condition of the present invention, which is specifically to treat a condition involving auto-immune disease, inflammatory dry skin disease or skin infections. And, for those reasons there is a divergence from the garlic/wormwood combination based formulations in terms of utility.